



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Motor Vehicles

TITLE-SERIES: 91-04

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: EXAMINATION AND ISSUANCE OF DRIVERS
LICENSE

CITE STATUTORY AUTHORITY: W. Va. Code §§17A-2-9, 17B-2-7, 17B-2-15 and 17E-1-18

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB2400

Section §64-8-2 Passed On 4/15/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 19, 2021

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Ronald David Johnson Jr Mba -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 91
LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES**

**SERIES 4
EXAMINATION AND ISSUANCE OF DRIVER'S LICENSE**

§91-4-1. General.

- 1.1. Scope. -- This rule establishes the procedures for the examination of applicants for driver's licenses and the issuance of driver's licenses.
- 1.2. Authority. -- W. Va. Code §§17A-2-9, 17B-2-7, 17B-2-15 and 17E-1-18.
- 1.3. Filing Date. -- April 16, 2021.
- 1.4. Effective Date. -- April 19, 2021.
- 1.5.-Sunset Provision. -- This rule shall terminate and have no further force or effect August 1, 2026.

§91-4-2. Application and Enforcement.

- 2.1. Application- This rule applies to the examination of applicants for driver licenses and the issuance and renewal of driver's licenses and identification cards.
- 2.2. Enforcement- Enforcement of this rule is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

§91-4-3. Definitions.

- 3.1. Birth Certificate. Means the certified original or certified copy of a birth certificate issued by a state or other governmental agency of the United States, its territories, or Puerto Rico responsible for the collection of vital records indicating a person's name and date of birth. The term birth certificate also means a Consular Report of Birth Abroad of a Citizen of the United States in a form authorized by Federal Law. For the purposes of this rule, a document issued by a hospital is not considered a birth certificate. For the purposes of this rule, the term birth certificate shall also include a valid United States Passport or a military identification card subject to the provisions of WV Code §17b-2-8(i).
- 3.2. Certified. Means a validation of a document by a state or other governmental agency responsible for the issuance, collection or verification of documents with a raised or stamped seal indicating the authenticity of the document. Duplicate copies, notarized copies not certified by the issuing agency are not acceptable.
- 3.3. Court Order. Means an original or copy of a court's official determination or final order.

3.4. Divorce Decree. Means an original or copy of a court's judgment or decree dissolving a marriage.

3.5. Driver's License. Means any permit or license issued by this state or any other state or jurisdiction which authorizes a person to operate a motor vehicle including an instruction permit, level 1, 2, or 3 driver's license or a commercial driver's license.

3.6. Full Legal Name. Means a person's first name, middle names or family names and last name without the use of initials or nicknames as established by identity documents.

3.7. United States Citizen and Immigration Services or USCIS. Means the United States Department of Homeland Security, Citizen and Immigration Services or if applicable, the Immigration and Custom Enforcement Agency or either's successor agency of the United States Department of Homeland Security. Wherever the term United States Immigration and Naturalization Services or INS is used, it shall be construed as referring to its successor agency, the United States Citizen and Immigration Services or if applicable the Immigration and Customs Enforcement Agency.

3.8. Marriage Certificate. Means the original or copy of the record of marriage verified by the state or other governmental agency responsible for the collection or verification of marriage records.

3.9. Residence Address. Means the address of the applicant's principal residence required to be on the face of the driver's license document by the provision of West Virginia Code §17B-2-8 with the exception of:

3.9.a. An applicant who can verify that his or her principal residence is physically located in West Virginia but who has no fixed address or designated address to which mail can be delivered by the United States Postal Service and who must use another address for the purposes of receiving mail;

3.9.b. Addresses protected under the provisions of the Violence Against Women and Department of Justice Reauthorization Act of 2005 or another state sponsored address confidentiality program;

3.9.c. Addresses protected under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996;

3.9.d. Addresses on restricted driver's licenses issued under the provision of the alcohol test and lock program established under the provisions of West Virginia Code §17C-5A-3a; or

3.9.e. Addresses on licenses issued to participants in witness protection programs, law enforcement officers, prosecutors or members of the judicial system who in opinion of the commissioner face substantial risk of harm if his or her license contains their residence address.

3.10. School Eligibility Certificate. Means the document approved by the State Department of Education and issued by a county Board of Education indicating that an applicant under the age of eighteen is in current compliance with the provisions of West Virginia Code §18-8-11 or a signed statement from a parent or legal guardian of a child who is being educated through home school pursuant to West Virginia Code §18-8-1c.

3.11. Social Security Card. Means the official document issued by the Social Security Administration (SSA) indicating the social security number assigned to a person. The Division requires the social security number of every applicant for a driver's license or identification card or holder of a driver's license or identification card as required by the provisions of the Personal Responsibility and Work Opportunity Act of 1996 as amended at 42 U.S.C. §666(a)(13) and as authorized by the provisions of the Tax Reform Act of 1976 as amended at 42 U.S.C. §405(c). The social security card is the proof of the actual issued number. For the purposes of this rule, except when the United States Social Security Administration electronically or otherwise fails to verify the match between the submitted name and number; the term social security card or proof of social security number shall also include;

3.11.a. A military identification card with the social security number issued to the applicant indicating active, retired, reserve or dependent status in the military of the United States in accordance with West Virginia Code §17B-2-8(i).

3.11.b. A Wage and Tax Statement Form W-2 or payroll stub with the applicant's employer's name and employer identification number, the applicant's social security number and the applicant's name and address; or

3.11.c. A Social Security 1099 Form with the applicant's full social security number and the applicant's full legal name; and

3.11.d. At the discretion of the Division, an applicant who is not a citizen of the United States but who presents proof of legal presence, identity and residency in this state in accordance with this rule, who is not eligible to receive a social security number may present a written statement subject to verification in the manner prescribed by the Commissioner, that he or she is not eligible for a social security card in lieu of a social security card and social security number.

3.11.e. In lieu of a social security card as proof of social security number, the following documents may be used to obtain a not for federal use driver's license or a not for federal use identification card:

(i) An original or copy of a certified Military Discharge Form DD 214 issued by the U.S. Military, with the social security number; or

(ii) A Medicare card issued in the applicant's full name, which contains the applicant's social security number and the signature of the applicant as the card holder.

3.11.f. In the Commissioner's discretion, the Division may accept a social security number provided by any applicant for a driver's license or identification card without a document presented as proof of social security number when the United States Social Security Administration verifies the social security number electronically, except for license types where a social security card or document submission is mandated by federal law or regulation.

3.12. State. - Means a state of the United States, the District of Columbia, Puerto Rico, The Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

3.13. Valid Driver's License. - Means a driver's license issued to a person whose privilege to operate a motor vehicle has not expired, and is not currently suspended, revoked or cancelled for any reason.

§91-4-4. Preliminary Examination of Applicants Never Licensed, Holding a License Expired more than 36 Months or Holding an Expired License from Another State or Jurisdiction.

4.1. An applicant for an instruction permit to operate a motor vehicle shall present a properly completed application on the form designated by the Commissioner. The Division shall make available information for driver's license and ID applicants that clearly delineates the requirements for a for federal use driver license or ID and a not for federal use driver's license and ID. The application shall include the applicant's full legal name and social security number as evidenced by the applicant's social security card. The application shall also include the address and all other information required by the provisions of the West Virginia Code and any other information required by the Division. The applicant shall also comply with the following:

4.1.a. The applicant shall provide the certified original or certified copy of a birth certificate as evidence of the applicant's full birth name, and date of birth. Foreign birth certificates are not acceptable. If no record of birth exists, in lieu of a birth certificate, the applicant shall provide any documentation required by the Division to establish the applicant's full birth name and date of birth. An applicant who is not a citizen of the United States shall

present all documents required by the Division to verify his or her legal presence in the United States, proof of identity, and proof of residency in this state;

4.1.b. The applicant shall provide proof of his or her social security number or a written statement subject to verification by the division that he or she is ineligible for a social security number;

4.1.c. If the applicant is under the age of eighteen, the applicant must have the consent of his or her parent or guardian as evidenced by the custodial parent or legal guardian's signature on the application for an instruction permit. However, an applicant under the age of eighteen who presents a marriage certificate as proof of marital status is exempt from the parental consent requirement;

4.1.d. An applicant under the age of eighteen shall present proof of current school enrollment in the form of certification from the applicant's school dated less than thirty days prior to the date of application. When application is made during summer, the school eligibility certificate may be dated as determined by the State Board of Education and is valid through the summer until the beginning of the next semester. If the applicant is not enrolled in school, he or she shall present evidence of progress toward a general education degree, exemption from school attendance or enrollment in an institution of higher education as approved by the applicant's county board of education;

4.1.e. A marriage certificate does not exempt an applicant from the requirement to submit a school eligibility certificate or from compliance with the requirements of the graduated driver's license program;

4.1.f. An applicant requesting to change the gender designation on their driver's license or identification card shall submit a completed Gender Designation Form as proscribed by the commissioner which form must require and be accompanied by a certification by a medical doctor of the person's gender; and

4.1.g. An applicant age eighteen or older shall provide two documents showing residency as provided in section 10 and one additional document verifying identity as provided in section 11 of this rule.

4.2. The preliminary examination shall consist of five components.

4.2.a. The Division shall administer a visual acuity test with a standard eye testing chart or mechanical device.

1. An applicant with uncorrected visual acuity of 20/40 or better in at least one eye will pass the visual acuity test.
2. An applicant with visual acuity of 20/40 or better in at least one eye with the use of contact lenses or glasses will pass the visual acuity test with the appropriate restriction placed on his or her driver's license.

3. An applicant whose visual acuity is less than 20/40 will fail the visual acuity test. An applicant who fails the visual acuity test may request a Driver License Advisory Board Form 2.

4. An applicant who presents a properly completed Driver License Advisory Board Form 2 which indicates that the applicant is within the parameters set forth in West Virginia Legislative Rules, Division of Motor Vehicles, Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, 91 CSR 5 will pass the visual acuity test with the appropriate restrictions placed on his or her driver's license.

5. An applicant may not use special lens arrangements, including but not limited to biopicor telescopic lenses, to satisfy the visual acuity standard.

6. An applicant for a Commercial Driver's License or endorsement shall adhere to the visual acuity standard in section 14 of this rule.

7. An applicant or licensee who cannot meet the requirements in paragraphs (1) - (6) of this subdivision is not entitled to a license or instruction permit.

4.2.b. Before the Division issues an instruction permit, the Division may require the applicant to pass a color vision test that determines the applicant's ability to distinguish between the colors green, amber and red.

4.2.c. Before the Division issues an instruction permit, the Division may require the applicant to pass a depth perception test that detects deficiencies in depth perception.

4.2.d. An applicant shall pass a basic knowledge examination consisting of not less than twenty-five questions based on information contained in the West Virginia Driver Licensing Handbook and other materials provided by the Division. An applicant may test orally with a headset via the Division's software program. At the Division's discretion, the applicant may use a translator. An applicant shall answer at least seventy-six percent of the questions correctly in order to pass the examination.

4.2.e. An applicant shall complete a driving while under the influence awareness education component as prescribed by West Virginia Code S17B-2-7 (b).

4.3. The driver license examiner shall mark and return an application for an instruction permit or a copy of the application to an applicant who fails a portion of the knowledge examination. The applicant may return in seven days for reexamination.

4.4. The driver license examiner shall approve the application of an applicant who successfully completes all components of the knowledge examination. The applicant is eligible for an instruction permit subject to the following:

4.4.a. A national check of the applicant's driver license status is completed and shows that the applicant's privilege to operate a motor vehicle is not currently suspended or revoked by this or any other state or jurisdiction; and

4.4.b. The applicant pays the required fee.

4.5. The instruction permit shall contain the full legal name of the applicant and all other information required by law or prescribed by the Commissioner. The Division shall maintain the social security number as a part of the licensee's record but it shall not appear on the face of the instruction permit.

4.6. The West Virginia Driver Licensing Handbook is the instruction guide of the Division concerning the examination of applicants for a driver's license and the qualifications required of applicants.

§91-4-5. Road Skill Examination.

5.1. An applicant who presents a valid instruction permit and who meets all other statutory requirements may complete the appropriate application and take the road skills examination subject to the following:

5.1.a. The applicant arrives at the examination site in a lawful manner;

5.1.b. The applicant presents his or her valid instruction permit, and if under the age of eighteen, a school eligibility certificate. Applicants age eighteen and older shall provide two additional documents verifying residency as required by section 10 of this rule;

5.1.c. The applicant presents current proof of insurance and a valid registration card for the vehicle used for testing; and

5.1.d. The applicant who is under the age of eighteen presents proof of completion of an approved course of driver's education, or the form prescribed by the Division indicating completion of a minimum of fifty hours of behind the wheel instruction with a minimum of ten hours obtained during nighttime driving conditions.

5.2. The road skills examination shall consist of:

5.2.a. A check of the safety equipment of the testing vehicle; and

5.2.b. An examination of the applicant's ability to operate a motor vehicle on a designated course consisting of a moderate grade, right turn, left turn and a traffic control device or stop sign. The applicant must show successful mastering of all skills required to safely operate a motor vehicle including backing and parallel parking. The applicant must give the proper turn signals, use good judgment in traffic situations and have the proper regard for pedestrians and traffic control devices and signals. Available occupant restraint devices must be properly adjusted and securely fastened whenever the vehicle is in motion. Only

the applicant and the examiner or examiners and an interpreter may occupy the vehicle during the test.

5.3. An applicant will fail the road skills examination if the applicant:

5.3.a. Appears for the road skills test with a vehicle with illegal or inoperable equipment. However, the Division may allow an applicant to correct a minor defect and continue the examination;

5.3.b. Has a crash involving any property damage or personal injury or a crash was prevented only by the action of another driver or the examiner;

5.3.c. Drives into or stalls the vehicle into a location which may be hazardous under certain traffic conditions;

5.3. d. Passes another vehicle yielding to a pedestrian in a crosswalk;

5.3.e. Makes two successive turns from the wrong lane under conditions which make the action hazardous;

5.3. f. Fails to stop for a traffic control device or signal;

5.3.g. Refuses to perform a maneuver which is part of the test;

5.3. h. Makes it apparent that he or she is dangerously inexperienced after proceeding a short distance on the course; or

5.3.i. Does not demonstrate the ability to locate and use all electronic, mechanical and safety equipment on the vehicle.

5.4. The examiner shall evaluate the applicant's performance and determine whether the applicant possesses the skills necessary to operate a motor vehicle. He or she shall record the results of the equipment check and road skills examination and record any restrictions.

5.5. The applicant may use a translator at the Division' s discretion.

5.6. An unsuccessful applicant may return for reexamination after a minimum of seven days have passed and if the applicant still holds a valid instruction permit. The applicant for reexamination must complete all of the components of the road skills examination.

5.7. Applicants who successfully complete the road skills examination are eligible for a driver's license with the appropriate restrictions and endorsements subject to the following:

5.7.a. The applicant shall complete an application on the form prescribed by the Commissioner, endorsed by the examiner and validated with the appropriate information;

5.7.b. A national check of the applicant's driver license status shows that the applicant's privilege to operate a motor vehicle is not currently suspended or revoked by this or any other state or jurisdiction; and

5.7. c. The applicant who is under the age of eighteen presents proof of completion of an approved course of driver's education, or the form prescribed by the Division indicating completion of a minimum of fifty hours of behind the wheel instruction with a minimum of ten hours obtained during nighttime driving conditions.

5.8. An applicant who successfully completes either the passenger vehicle knowledge examination or road skills examination shall obtain the appropriate instruction permit or driver's license within thirty days of successfully passing the examination.

§91-4-6. Issuance And Content Of The Driver's License And Identification Card.

6.1. The driver's license or identification card shall contain the full legal name of the applicant, a color photograph of the applicant taken by the Division and all other information required by law or prescribed by the Commissioner. The Division shall maintain the social security number as a part of the licensee's or identification card holder's record but it shall not appear on the face of the driver's license or identification card.

6.1.a. The Commissioner shall designate the color red for licenses issued to drivers under the ages of eighteen and the color blue for licenses issued to drivers under the age of twenty-one in accordance with West Virginia Code §17B-2-1 (b);

6.1.b. In order for a driver to obtain the appropriately colored license based upon his or her age, the Commissioner may extend the license to thirty days after the expiration date that appears on the front of the license; and

6.1.c. The applicant may choose from the following options as to display of his or her name on the driver's license or identification card.

1. Last name, first name then middle name as evidenced by the applicant's birth certificate or other source document that is compliant with the Real ID Act of 2005 and any federal rule in furtherance of it. Last or middle name as a combination of last or middle names as evidenced by marriage certificate or birth certificates. A "For Federal Use" driver's license or identification card shall have a naming convention consistent with federal requirements.

2. If the applicant prefers a name different than the name on the birth certificate or other source document, the full legal name may be established by a combination of names from the birth certificate or other source document and a marriage certificate, adoption records, court orders, or documentation from any other mechanism permitted by law to establish or change a name.

6.2. The applicant may choose from the following types of driver's license or identification cards:

6.2.a. "For Federal Use" driver's license or identification card. This driver's license or identification card shall be marked with a "gold star" in the upper right hand corner of the card. This driver's license or identification card shall be issued in accordance with the REAL ID Act of 2005 and the Department of Homeland Security's rules, 6 CFR § Part 37 (2008).

6.2. b. "Not For Federal Use" driver's license or identification card. This driver's license or identification card shall be marked with a phrase in accordance with the REAL ID Act of 2005 and the Department of Homeland Security's rules, 6 CFR § Part 37 which indicates the driver's license or identification card is not satisfactory for federal use.

6.3. The applicant may upgrade to a "For Federal Use" driver's license or identification card at any time with the submission of the documents required by the provisions of the REAL ID Act of 2005 and Code of Federal Rules, 6 CFR § Part 37 (2008).

§91-4-7. Renewal Of Driver's License And Identification Card.

7.1. The driver's license or identification card is valid for the statutory period of time based on the age of the applicant and the length of the applicant's authorized legal presence in the United States.

7.2. The Division shall send via first class mail or by electronic means an application for renewal to each licensee at least ninety days prior to the day of the license's expiration to the licensee's address of record. The renewal form shall clearly delineate the requirements for a for federal use driver's license or ID and a not for federal use driver's license and ID.

7.3. A licensee shall renew his or her license prior to or on the expiration date in order to legally drive a motor vehicle in this or any other state.

7. 4. The Division shall complete a national check of the renewal applicant's driver license status. Any licensee whose driving privileges are suspended or revoked in this or any other state for an offense for which this state would suspend or revoke a person's privilege to operate a motor vehicle, is not eligible for renewal of his or her driver's license.

7.4. a. The Division shall not refuse to renew a driver's license for an offense that is more than ten years old and not involving a driving under the influence related offense; and

7.4.b. The Division, at its' discretion, may renew an applicant's driver's license if his or her driving privileges are suspended or revoked by another state or jurisdiction for an offense for which the jurisdiction of record cannot provide records or assistance to clear the offense. The renewal applicant shall provide written documentation from the suspending jurisdiction indicating that the records to clear the suspension or revocation are unavailable.

7.5. Any West Virginia licensee whose license is expired thirty-six months or less may renew the license without resubmitting to a knowledge or road test. Any West Virginia licensee whose license is expired more than thirty-six months, shall resubmit to the examination requirements applicable to the type of license and endorsements the licensee is renewing.

7.6 A licensee who will be out of state at the time his or her license expires shall renew the license prior to departure. The licensee may renew the license within two years prior to expiration.

7.7. The Division may, upon request, renew the driving privileges of a licensee who is temporarily located out of state at the time his or her license expires.

7.8. The Division shall upon request issue a letter to active duty military personnel licensed in West Virginia which indicates that the license remains valid and shall not expire until six months after the licensee's honorable discharge.

7.9. Any licensee or identification card holder seeking to renew his or her license or identification card shall present proof of identity and proof of residency as prescribed by the Division and this rule and pay all required fees.

7.10. The Division may at its discretion issue a nontransferable, temporary driver's license valid for a period of time not to exceed sixty days to an applicant with a class E or class F driver's license, whose driving privileges are not suspended, revoked or cancelled and who is otherwise eligible for renewal.

7.11. For the purposes of this rule when an applicant's driver's license expires on a weekend, holiday, or on a day that a full service regional office is closed, the applicant has until the end of the next business day to renew his or her license to avoid payment for the additional penalty fee of \$5. If the date upon which the driver's license has been expired more than thirty-six months occurs on a weekend, holiday or on a day that a full service regional office is closed, the applicant has until the end of the next business day to renew his or her driver's license without being required to take the vision, knowledge and road skills examination. Nothing in this provision may be interpreted to grant an applicant relief from any criminal penalties associated with operating a motor vehicle without a valid driver's license.

§91-4-7A. Online Renewal Of Driver's License And Identification Card.

7A.1. At the discretion of the Division, any licensee or identification card holder seeking to obtain a duplicate driver's license or identification card or to renew his or her license or identification card may be eligible to renew online if a driver's license transaction was completed in person at a division office within the past 16 years. Subject to:

7A. 1. a. The applicant is eligible to renew his or her license or identification card, in accordance with §91-4-7 of this rule.

7A.1.b. The applicant is a United States citizen and his or her full legal name and address remain unchanged from the address on file with the Division.

7A.1.c. The Division's online renewal process shall clearly delineate the requirements for a for federal use driver's license or ID and a not for federal use driver's license and ID.

§91-4-8. Transfer Of Driver's License.

8.1. A new resident who wishes to operate a motor vehicle in this state shall obtain a West Virginia driver's license within thirty days of establishing residency in this state. The applicant shall substantiate identity, name, age, gender, school enrollment, West Virginia residency, social security number or substitute and legal presence with the documents required under sections 3, 4, 6, 10, 11 and 12 of this rule.

8.2. An applicant age eighteen or older who holds a valid driver's license from another state or jurisdiction of the United States or from a foreign jurisdiction with which this state has a reciprocal agreement may exchange the out of state driver's license for a West Virginia driver's license without taking the knowledge examination or road skills examination prescribed in section 4 and 5 of this rule subject to the following:

8.2.a. The Division completes a national check of the applicant's driver's license status. Any licensee whose driving privileges are suspended or revoked in this state, or in any other state or jurisdiction for an offense for which this state would suspend or revoke a person's privilege to operate a motor vehicle, is not eligible for licensure;

8.2.b. The applicant surrenders his or her valid out of state license. If the applicant's driver's license has been lost, the applicant shall provide a certified driving record dated thirty days or less from the date of application from the applicant's former state of residence indicating that the applicant's driver's license is valid and a written statement indicating his or her intention to surrender his or her driving privileges and the circumstances of why the applicant does not have a valid driver's license in his or her possession;

8.2.c. The applicant passes the visual acuity test prescribed by this rule, and completes the driving under the influence awareness component as prescribed as prescribed by West Virginia Code §17B-2-7 (b);

8.2.d. The applicant licensed by a foreign jurisdiction with which this state has a reciprocal agreement shows proof of legal presence as required under section 12 of this rule.

8.3. The Division may require a driving record from an applicant's prior licensing state or jurisdiction to be incorporated into the record maintained by the Division. The Division may consider the entire record in a revocation or suspension action, or consider any restrictions applied to an applicant's privilege to operate by the applicant's prior licensing state to determine eligibility for a license.

8.4. An applicant under the age of eighteen who holds a valid driver's license from another state or jurisdiction of the United States which has a graduated driver's license system may exchange the out of state driver's license for a West Virginia driver's license at a comparable level, without taking the written examination or road skills examination prescribed in section 4 and 5 of this rule subject to the following:

8.4.a. The applicant complies with the provisions of subsection 8.2. of this rule and in addition presents a:

1. Valid school eligibility certificate as prescribed in subdivision 4.1.d of this rule that will also meet the proof of residency requirement of Section 10 of this rule; and
2. Driving record dated thirty days or less from the applicant's prior state or jurisdiction of licensure.

8.4.b. An applicant who does not possess a graduated driver's license which equals or exceed this state's level 2 graduated driver's license or who was previously licensed in a state or jurisdiction which does not have a graduated driver's license system, shall comply with the provisions of section 4 and 5 of this rule as if he or she never held a license. However, the applicant will be credited with whatever time period the applicant held the previous state or jurisdictions license toward any time periods required for level 1 graduated driver's license if the applicant presents a current driving record at the time of his or her initial application for a West Virginia driver's license; and

8.4.c. An applicant's driving record from his or her previous state of licensure will be transferred and become part of the applicant's West Virginia driving record.

§91-4-9. Reissuance Of Driver's License with Changes or Issuance of a Duplicate Driver's License or Identification Card.

9.1. Change of Address. In accordance with law, all licensees shall provide the Division with a correct address within twenty days of moving to a new location. If a licensee's address is changed by the United States Postal Service, the licensee shall provide the Division with a correct address twenty days prior to the final date on which mail with the old address is deliverable. If the licensee chooses to obtain a new driver's license, he or she shall present at least one proof of identity and two proofs of residency as described in Sections 10 and 11 of this rule.

9.2. Change of Name. Any person who changes his or her name shall apply for a new license or identification card within twenty days of the name change and shall present at least one proof of identity and one proof of residency as described in Sections 10 and 11 of this rule in addition to any documents required to substantiate the change of name.

9.2.a. The licensee or identification card holder shall substantiate a change of name by marriage with a marriage certificate. The licensee or identification card holder may choose from the options to display his or her name on the driver's license or identification card in Section 6 of this rule.

9.2.b. The licensee or identification card holder shall substantiate a change of name by divorce, or court order with a copy of the divorce decree or court order; and

9.2.c. Any other change in the name requires a certified birth certificate or a court order ordering the name change.

9.3. Any change in the birth date requires a certified birth certificate.

9.4. Any change or correction of the social security number requires a social security card.

9.5. Any change of gender requires submission of a completed Gender Designation Form, as proscribed by the commissioner which form must require and be accompanied by a certification by a medical doctor of the person's gender.

9.6. Any change to restriction or endorsement requires proper documentation.

9.7. The Division shall collect the statutory fee for the reissuance of any license or identification card.

9.8. An applicant requesting a change to his or her driver's license or identification card shall surrender the previously issued driver's license or identification card.

9.9. An applicant under the age of eighteen requesting a duplicate driver's license or a change to his or her driver's license shall also present current proof of school enrollment which shall also serve as proof of residency.

§91-4-10. Residency Requirement.

10.1. An applicant for any license or identification card shall be a resident of the State of West Virginia except as provide under subsection 10.4 of this rule. The West Virginia address of residence shall appear on the face of the license or identification card except as provided under subsection 3.9 of this rule. The Division shall not license or issue an identification card to an applicant who does not have a West Virginia address unless the applicant resides in an area of West Virginia not served by a West Virginia post office or in accordance with subsection 10.4 of this rule. Acceptable documents for proof of residency are:

10.1.a. Current utility bills indicating a West Virginia address;

10.1.b. Tax records indicating a West Virginia address;

10.1.c. Residential rental and lease agreements for a West Virginia residence;

10.1.d. Mortgage documents for a West Virginia residence;

10.1.e. A W-2 form not more than 18 months old with a West Virginia address;

10.1.f. A current concealed weapons permit with a West Virginia address;

10.1.g. A current West Virginia School Eligibility Certificate if applicant is under the age of eighteen;

10.1.h. A motor vehicle registration card in the name of the applicant issued by the Division with a West Virginia address;

10.1.i. West Virginia Voters Registration Card;

10.1.j. Proof of receipt of West Virginia Public Assistance;

10.1.k. West Virginia Homestead tax exemption; and

10.1.l. Notarized affidavit of homeowner or lessee that the applicant lives at the household address and verified by two proofs of residency in the name of the homeowner or lessee.

10.1.m. Any other document authorized as proof of residency approved under the REAL ID Act of 2005 or rule administering it.

10.2. The Division may, at its discretion accept or require other documentation to substantiate residency in this state.

10.3. The Division shall not license or issue an identification card to persons who are not bona fide residents of this state except as provided under section 10.4 of this rule. Nonresidents who previously resided and were licensed or issued an identification card in West Virginia may not renew a West Virginia license or identification card until re-establishing a residence in this state.

10.4. The Division may issue applicants participating in an Alcohol Test and Lock Program in compliance with the provisions of West Virginia Code §17C-5A-3a a restricted driver's license requiring the use of a motor vehicle equipped with an alcohol test and lock device containing an address determined by the division.

§91-4-11. Identity Requirements.

11.1. Acceptable forms of proof of identity for citizens of the United States are:

11.1.a. A certified original or certified copy of a birth certificate;

11.1.b. A valid photo driver's license or identification card expired 36 months or less issued by the Division only on a not for federal use driver's license and a not for federal use identification card;

11.1.c. A valid United States passport or passport card;

11.1.d. A valid United States active duty, retiree or reservist Military photo identification card (DOD IDDD-2) subject to the provisions of WV Code §17B-2-8 (i) only on a not for federal use driver's license and a not for federal use identification card;

11.1.e. A certificate of United States Citizenship Form N-560;

11.1.f. A certificate of United States Naturalization Form N-550 or N-570; and

11.1.g. Any other document authorized as proof of identity approved under the REAL ID Act of 2005 or rule administering it.

11.2. The Division may at its discretion accept other documentation to substantiate identity.

11.3. Acceptable forms of identity documents for persons who are not citizens of the United States are valid USCIS documents with a photo that can be verified with the United State Citizen and Immigration Service.

11.4. All documents required by this rule to show age, identity, residency and or legal presence in this country must show the same name and/or date of birth, or an association between the information on the forms. Additional documentation may be required if a connection between the documents cannot be established or if the documents are not original or certified copies issued by the authorized government agency. The Division may waive any documents required to establish a connection, match or association between names if the Division determines that the applicant is not attempting to change his or her identity, to assume someone else's identity or to perpetuate a fraudulent identity.

§91-4-12. Proof Of Legal Presence In The United States.

12.1. The Division shall not issue a driver's license or identification card to a person who is not a citizen of the United States, who does not submit proof satisfactory to the Division that the applicant's presence in the United States is authorized under federal law and who cannot show that he or she is a resident of West Virginia.

12.2. Acceptable documents to establish United States citizenship are:

12.2.a. An original or certified birth certificate;

12.2.b. A United States passport or passport card, currently valid or expired less than 2 years, only on a not for federal use driver's license and a not for federal use identification card;

12.2.c. A Certificate of Naturalization Form N-570;

12.2.d. A Certificate of Citizenship Form N-560, N-561, N-565; or

12.2. e. A Temporary Resident Card N-688, N-688a, or N-688b.

12.3. The Division at its discretion may accept another document which establishes a place of birth in the United States or its territories or which indicates United States citizenship.

12.4. The following subdivisions describing categories of persons who are not citizens of the United States, prescribe the documents required to establish that an applicant is authorized under federal law to be in the United States and who is eligible to receive a driver's license if he or she has complied with all other requirements of West Virginia law and this rule.

12.4.a. Immigrants. Immigrants shall provide the following documents:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall provide a statement of ineligibility for a social security number in accordance with section 3 of this rule;
2. Two forms showing West Virginia residency as identified in section 10 of this rule; and
3. One of the following documents or similar successor documents:
 - A. A Form I-551 Alien Registration Receipt Card;
 - B. A valid Temporary I -551 stamp in Foreign Passport (with English translation) or on INS Form I-94; or,
 - C. Valid re-entry permit Form I-327.
 - D. The Division may at its discretion accept other INS or USCIS documentation that establishes the applicant's legal presence.

12.4.b. Non-immigrants. Non-immigrants are persons granted temporary entry into the United States. Applicants who are Non-Immigrants, granted temporary entry into the United States shall provide:

1. The applicant's social security number as evidenced by the applicant' s social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number;
2. Two documents showing West Virginia residency as identified in section 10 of this rule;
3. A valid foreign passport;

4. A form I-94;
5. A visa issued by the United States if applicant is from a nation whose citizens are required by the United States to obtain a visa; and
6. All original documents to verify status and length of authorized stay.
 - A. If applicant's status is F-1 or F-2, a form I-20 and written verification of attendance at the school listed on form I-20 is also required:
 - B. If the applicant's status is H1-A, H1-B, or H-3, written verification from employer is also required.
 - C. If the applicant's status is J-1, or J-2, a form DS 2019 and written verification of attendance at the school listed on form DS 2019 is also required;

12.4.c. Refugee. An applicant who is a refugee with a sponsoring organization shall provide:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number;
2. One form showing West Virginia residency as identified in section 10 of this rule;
3. Form I-94 showing grant of refugee status;
4. A Reception and Placement Program Assurance Form; and
5. Written verification of identity and West Virginia residency presented by an employee of a sponsoring organization approved by the United States Department of State to resettle refugees in West Virginia.

12.4. d. Applicants who are refugees who do not have an approved sponsoring organization or an asylee shall provide the following a:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number;
2. Two forms showing residency as identified in section 10 of this rule;
3. Form I-94 stamped Refugee/ Asylee; and

4. Form I-688 B and I-766 Employment Authorization Document.

12.5. The Division requires verification of any submitted documents and the applicant's legal status by the United States Citizen and Immigration Service before a driver's license or identification card is issued.

12.6. All forms designations refer to the current form or to any successor or substitute form promulgated by the Immigration and Naturalization Service, United States Citizen and Immigration Service or the United States Immigration Control Enforcement Agency.

12.7. The Division may at its discretion accept other INS, USCIS, or ICE documentation that establishes the applicant's legal presence in this country.

§91-4-13. Motorcycle License or Endorsement.

13.1. An applicant for a motorcycle-only instruction permit shall submit to the preliminary examination described in section 4 of this rule except that the knowledge examination may contain information from the West Virginia Motorcycle Licensing Handbook as well as the West Virginia Driver Licensing Handbook.

13.2. An applicant for a motorcycle endorsement instruction permit shall present a valid West Virginia license, pass the visual acuity test described in section 4 of this rule and pass a knowledge examination as described in section 4 of this rule except that the examination may contain information from the West Virginia Motorcycle Licensing Handbook in addition to the West Virginia Driver Licensing Handbook .

13.3. Any applicant under this section shall pass a road skill examination designed to test the skills of a motorcycle operator and meet the requirements described in section 5 of this rule. The Division may exempt any applicant who satisfactorily completes the West Virginia motorcycle safety education program from the road skill examination. No applicant is eligible for the road skill examination until at least seven days after issuance of the motorcycle instruction permit.

13.4. An applicant shall perform the motorcycle road skill examinations on a motorcycle with a 50cc engine or larger.

13.5. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Motorcycle Licensing Handbook is the instruction guide of the Division concerning the examination and qualification of applicants for a motorcycle license or endorsement.

13.6. Any applicant for a motorcycle license or endorsement under the age of eighteen shall complete the following Graduated Driver's License requirements prior to application:

13.6.a. The applicant shall hold a level one instruction permit conviction free for one hundred eighty days immediately preceding the date of application;

13.6.b. The applicant shall complete either a driver's education course approved by the state department of education or fifty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one on the form prescribed by the division: Provided, That nothing in this subdivision shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student; and

13.6.c. The applicant shall present a current school eligibility form or otherwise show compliance with West Virginia Code §18-8-11.

13.7. Applicants for a motorcycle license or endorsement shall comply with all identity, residency and legal presence requirements of this rule.

§91-4-14. Commercial Driver's License.

14.1. An applicant for a commercial driver's license instruction permit shall complete a Commercial Driver's License Application. The applicant shall include a current Federal Motor Carrier Safety Administration Medical Examiners Report (physical long form) and Medical Examiners Certificate (M.E.C. Card) unless he or she is exempt under Title 49 CFR §390.3 of the Federal Motor Carrier Safety Regulations. The applicant shall satisfactorily complete a knowledge examination for the Commercial Driver's License and each endorsement as prescribed by the Commissioner.

14.2. An applicant for a Commercial Driver's License or endorsement shall present a Commercial Driver instruction permit and satisfactorily complete any applicable road skill examination as determined by the Commissioner.

14.3. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Division of Motor Vehicles Commercial Driver's License Manual is the instruction guide of the Division concerning the examination and qualification of applicants for a Commercial Driver's License.

14.4. A licensee, if required by federal law, shall maintain a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (M.E.C. Card) on file with the Division. In accordance with federal law, any certificate more than two years old is not current. A licensee with a Class D driver's license who operates a commercial vehicle over 10,000 pounds but less than 26,001 pounds is required to comply with requirements related to submitting and maintaining a current Federal Motor Carrier Safety Administration Medical Examiners Certificate.

14.5. The Division shall cancel the license of any licensee that does not provide a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (M.E.C. Card) within thirty days from the date the previous Certificate is no longer current.

14.6. The following provisions apply to the Intrastate Waiver Program for drivers of commercial vehicles with either a Commercial Driver's License or a Class D Driver's License:

14.6.a. Licensees who do not meet the requirements of Title 49 CFR §391.41 (b) and cannot obtain a federal interstate waiver may apply for an intrastate waiver with the Division;

14.6.b. A commercially licensed driver with an intrastate waiver shall only operate a commercial vehicle in West Virginia. Individuals with an intrastate waiver shall not drive a commercial vehicle in furtherance of interstate commerce;

14.6.c. A licensee with an intrastate waiver is not eligible for passenger and hazardous material endorsements except that an individual who has a passenger or hazardous material endorsement prior to passage of this rule may, in the Commissioner's discretion, maintain the endorsement as long as all other criteria in this rule and federal law and rule are met ;

14.6.d. A licensee shall complete and submit a Commercial Driver License Application, a Federal Motor Carrier Safety Administration Medical Examiners (DOT) Medical Card, a supplemental Medical History Form and/or a Vision Form, and any other information considered necessary; and

14.6.e. An applicant may submit any other information pertaining to the applicant's ability to safely operate a commercial motor vehicle such as letters from a treating physician, a specialist or an employer.

14.7. The Commissioner, or his or her designee, shall review the documents provided in subdivision (d) and (e), the driver history record of the applicant, and the following medical guidelines:

14.7.a. Limb Impairment: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of a loss or impairment of a foot, leg, arm, hand or fingers unless the applicant passes a skills test in a commercial vehicle adapted for the specific disability. Any waiver issued shall be vehicle specific;

14.7.b. Vision: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of vision problems unless it is found that:

1. The applicant has a distance visual acuity of 20/60 or better with or without corrective lenses in at least one eye;
2. The applicant uses only conventional corrective lenses which excludes bioptic lenses;
3. The applicant does not exhibit uncorrectable double vision;
4. The applicant does not show evidence of disease or rapid deterioration of vision;

5. The applicant can readily distinguish which light is illuminated on a traffic signal showing standard red, amber, and green; or

6. An ophthalmologist or optometrist reports on the supplemental Vision Form that the applicant can safely operate a motor vehicle with appropriate restrictions.

14.7.c. Epilepsy: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of epilepsy or any other condition likely to cause loss of consciousness unless the applicant is seizure free for three years immediately preceding application and free from loss of consciousness, a blackout, fainting or disorientation for one year immediately preceding application. The applicant shall prove reliability in taking prescribed medication by providing blood content level readings;

14.7.d. Cardiovascular: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of cardiovascular problems unless there is no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure . The Division shall not grant an intrastate waiver to any applicant who is disqualified from an interstate license because of a blood pressure reading outside of acceptable federal limits;

14.7.e. Diabetes: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of diabetes unless a board certified/ eligible endocrinologist or primary care physician attests that the applicant:

1. Is free from insulin reactions which means the applicant does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month;
2. Is able to and has demonstrated willingness to properly monitor and manage his or her diabetes;
3. Is not likely to suffer any diminution in driving ability due to his or her diabetic condition; and
4. Has not exhibited any instances of diabetic shock or coma in the year immediately preceding the application for an intrastate waiver.

14.7.f. Alcohol or Drugs: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license until the applicant has been free from addiction to or abuse of alcohol or other drugs for one year immediately preceding application;

14.7.g. Psychiatric Disorders: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of a mental, nervous, organic, or functional disease or psychiatric disorder if:

1. The applicant exhibits homicidal, suicidal, or destructive behavior;

2. The applicant has experienced extreme anxiety, depression, paranoia, confusion, delusions or hallucinations in the year immediately preceding application; or

3. The applicant has been hospitalized for any condition described in Paragraph (A) or Paragraph (B) in the three years immediately preceding the application.

14.7.h. An applicant disqualified from an interstate license for a medical condition not discussed in this subdivision may apply for an intrastate waiver. The Division shall review applications on a case by case basis with due regard for the applicant's ability to safely operate a commercial motor vehicle. The Division shall not issue an intrastate waiver to an applicant who does not meet the federal standards for hearing found in Title 49 CFR §391.41 (11);

14.7.i. After reviewing the relevant material, the Commissioner or his or her designee may grant or deny an intrastate waiver or refer the application to the Medical Advisory Board for a recommendation. If an intrastate waiver is granted, the Commissioner or his or her designee may apply restrictions or conditions to the license as determined necessary;

14.7.j. If at any time after issuing the license, it is determined the applicant failed to meet a condition or no longer qualifies for an intrastate waiver, then the Commissioner shall cancel the license or modify it with appropriate restrictions, endorsements and/or conditions;

14.7.k. If an intrastate waiver is denied or canceled, the applicant may reapply with additional information at any time. An applicant or licensee who is denied an intrastate waiver is not entitled to an administrative hearing; and

14.7.1. Intrastate waivers granted by another state are not valid in West Virginia.

14.8. A licensee whose commercial driving privileges are disqualified based on a sworn report submitted by a law enforcement officer in accordance with West Virginia Code §17E-1-15 may request a hearing in accordance with West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1. The docket fee for the hearing is \$50.

14.9. A third party examiner who has paid either the initial application fee of \$100 or the \$50 renewal application fee and has contracted with the Division may conduct a road skills examination test. The Division may dismiss a third party examiner who fails to comply with the terms of any contract or agreement with the Division.

14.10. Designated employees of the Division shall conduct random checks of third party examinations for compliance with state rules and federal regulations and any written agreement. All third party examiners shall maintain current certification.

14.11. The Division shall conduct the hazardous material endorsement examination in the English language only and shall issue the endorsement in accordance with the provisions of

Section 1012 of the USA Patriot Act as codified at 49 U.S. C. §5103 and Federal Rules implementing the provisions of Section 1012.

14.11.a. In accordance with the provisions of 49 U.S.C. §5103 and 49 CFR §Part 1572 (2004), all applicants for either an original or renewal of a hazardous material endorsement shall submit fingerprints in the manner prescribed by the Division and undergo a security threat assessment check by the United States Department of Homeland Security Transportation Security Administration and by the United States Department of Justice, Federal Bureau of Investigation; and

14.11. b. Any appeal of a denial of a hazardous material endorsement by the United States Department of Homeland Security, Transportation Security Administration shall be heard by the appropriate federal agency and not by the Division of Motor Vehicles.

14.12. The division may, upon appropriate application allow a licensee with a commercial driver's license to temporarily downgrade his or her driver's license status to a Class E passenger vehicle driver's license at the time of renewal if he or she has a temporary disability which prevents the licensee from immediately meeting the Federal Motor Carrier Safety Administration medical criteria. The licensee may restore his or her driver's license to CDL status without retesting if the licensee meets the federal medical criteria within three years of the initial downgrade.

14.13. A commercial driver's license whose privilege to operate a commercial motor vehicle has been revoked, suspended or disqualified for more than three years must pass the knowledge and road skills examination prior to reinstatement of his or her CDL driver' s license.

14.14 A commercial driver' s licensee whose privilege to operate a commercial motor vehicle has been downgraded to a Class E driver's license due to an expired medical examination certificate has three years to acquire a valid medical examination certificate and upgrade back to a CDL without retesting. If a driver has been downgraded longer than three years, retesting is required for both the knowledge and road skills in order to requalify for a CDL.

§91-4-15. Non Driver Identification Cards.

15.1. The Division may issue a children' s identification card to any person two years old or older but younger than sixteen years old subject to the following:

15.1.a. A custodial parent or legal guardian accompanies the child at the time of application;

15.1.b. The parent or legal guardian provides the child's certified birth certificate and social security card. If the child is not a citizen of the United States, the parent or legal guardian shall provide in lieu of the birth certificate, proof of the child's legal presence in accordance with section 12 of this rule;

15.1.c. The parent or legal guardian provides proof of West Virginia residency;

15.1.d. The Division may issue children's identification card containing less information than a non-driver identification card; and

15.1.e The Division may use the information from a children's identification card to assist law-enforcement officials to locate a missing or kidnapped child.

15.2. The Division may issue a non-driver identification card to any person sixteen years old or older subject to the following:

15.2.a. The applicant does not have a valid driver's license;

15.2.b. The applicant provides certified birth certificate and social security card or any alternate acceptable for the issuance of a driver's license; and

15.2.c. The applicant complies with the applicable provisions of this rule pertaining to identity, residency and legal presence.

15.3. The holder of an identification card or children's identification card shall surrender the card to the Division when the holder is issued a driver's license. A holder of an identification card who has surrendered his or her driver's license in order to obtain an identification card may obtain a driver's license without the requirement of retesting if otherwise eligible under section 7.5 of this rule, if he or she reinstates his or her driver's license within six months of obtaining the identification card.

15.4. The Division may issue a non-transferable temporary identification card valid for a period not to exceed 60 days to applicants who appear otherwise eligible but who submit documents that require additional verification.

§91-4-16. Review And Verification Of Documents.

16.1. The Division reserves the right to photocopy, review, and verify any document submitted to meet the requirements of this rule prior to the issuance of a driver's license or identification card.

16.2. The Division shall notify the applicant or licensee by regular mail to the address of record of its determination and may require the applicant to provide the original documents upon his or her return to the office for issuance of the driver's license or identification card.